

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON HIGHWAYS AND TRANSPORTATION

Call to Order: By **SEN. VICKI COCCHIARELLA**, on January 30, 2001
at 3:00 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Arnie Mohl, Chairman (R)
Sen. Ric Holden, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Vicki Cocchiarella (D)
Sen. Dan Harrington (D)
Sen. Sam Kitzenberg (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Glenn Roush (D)

Members Excused: Sen. Bob DePratu (R)

Members Absent: None.

Staff Present: Connie Erickson, Legislative Branch
Marion Mood, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 267, 1/18/2001; HB 18,
1/23/2001
Executive Action: SB 208; SB 225; SB 191; SB 237

HEARING ON SB 267

Sponsor: SEN. E.P. "PETE" EKEGREN, SD 44, Choteau

Proponents: Brenda Nordlund, Department of Justice
Bob Stephens, self

Opponents: **Greg Van Horssen, State Farm Insurance Co.**

Opening Statement by Sponsor:

SEN. E.P. "PETE" EKEGREN, SD 44, Choteau, opened by saying that the essence of SB 267 is to seal a young person's record pertaining to an MIP - minor in possession - charge unless the offense was committed while operating a vehicle, until he reaches the age of 21, and it must become confidential criminal justice information. He said it is not unreasonable if these young people are responsible citizens at the age of 21 for these records to be expunged.

Proponents' Testimony:

Brenda Nordlund, Department of Justice, Motor Vehicle Division, stated that she felt placing an MIP convictions on a person's driving record does create problems for youths in a variety of situations and acknowledged that current practices pertaining to this needed to be changed.

Bob Stephens, Teton County, self, related an incident where a young man who had been drinking in a downtown bar called his girlfriend to drive him home; after she picked him up, she was stopped by a deputy sheriff and charged with a 'minor in possession' because the young man had beer in the car. He felt it was not fair for her to be charged, and have that on her record for the rest of her life, and lauded this bill for its merits.

Opponents' Testimony:

Greg Van Horssen, State Farm Insurance Company, informed the committee that his company opposed this bill and similar bills which would in effect mask driving record information because it took away from the insurer one more tool by which to accurately assess future risk. He added this would not only impact one particular driver who may have had a run-in with the law but also to drivers who have not because insurance companies assess future risk by looking into the past, since insurance premiums are based on past conduct and statistics involving past conduct. He stated that insurance companies use accurate information to predict both the number and magnitude of claims; the more information is available the more accurately they can set premiums. He maintained that past violation of the law was a predictor of future claims regarding the operation of automobiles: with a conviction, the chances of future claims statistically increases;

with multiple violations, the chance is even greater. He felt that with this bill, all this important information will be kept from the insurance companies, diminishing their ability to assess risk. He feared that the companies would be forced to guess what this person's driving past might have been, thereby denying them access to information that is available to them now. He asked the committee to consider whether it was fair to guess about past criminal conduct and thereby raise everybody's rate in an attempt to cover this potential risk. He also pointed to a statute which says information about driving history three years old or older cannot be used against you with regards to setting rates; this means that through simple passage of time, without further violations, a person would be able to get back into a normal rate classification, without the bill at hand.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 11.4}

SEN. JERRY O'NEIL asked of the sponsor if section 45-5-624 in the bill included tobacco with regards to an MIP charge. **SEN.**

EKEGREN answered that he did not think so. **SEN. O'NEIL** told of the request by one of his constituents to sponsor such a bill because his son was charged with possession of tobacco, and his insurance premium subsequently was raised; he then asked if this bill could be amended to include tobacco. **SEN. EKEGREN** answered this would be for the committee to decide, but he personally would not like to see tobacco included. **CHAIRMAN VICKI**

COCCHIARELLA felt that this would not fit under the title of this bill. **SEN. GLENN ROUSH** asked of **Brenda Nordlund** if a minor could be cited for MIP under current law if he was sober and the liquor found in his car was left there by someone else. **Brenda Nordlund** replied that it would be a discretionary charge by the officer, and it could either be a straight 'minor in possession' ticket, or it could be written as 'minor in possession' while driving.

SEN. ROUSH asked for clarification of the law as it pertains to the maximum alcohol limit for minors which he believed to be .01.

Brenda Nordlund responded that the correct limit was .02 for persons under the age of 21, under statute 61-8-410 passed by the 1995 legislature, but she pointed out this was a separate

section. **SEN. ROUSH** wanted to make sure he understood the bill correctly and wondered if the minor was in possession and above the limit of .02, would the record of a conviction be on his

record and open to the public. **Brenda Nordlund** replied that it would only if they were convicted under the statute 61-8-410; this bill only deals with statute 45-5-624. **SEN. ROUSH** thanked

her for the clarification. **SEN. DAN HARRINGTON** addressed **Greg Van Horssen** and asked why he had a problem with the bill, given

the three year limit he talked about earlier. **Greg Van Horssen**

reiterated that this bill would mask, or seal, any prior violation once the offender turned 21, making this information unavailable to insurance companies or anyone else. This makes it difficult for them to set rates because they operate on the assumption that criminal behavior is an indicator of increased risk, and that multiple violations of a criminal code increase that risk. He stated it was entirely possible for a young man to violate this statute several times in one year when he was 20, and all of these convictions would be gone as soon as he turned 21 and his record sealed. These judgment errors should raise a red flag, but this bill would make any assessment impossible, and the passage of three years would not play a role here. **SEN.**

HARRINGTON wanted to make sure that the three-year rule still applied. **Greg Van Horssen** assured him that nothing on a driving record that was three years old could be used against a driver in setting his insurance rates, regardless of passage of this bill. In his hypothetical case, the record of the then 20 year old would be wiped clean when he turned 23, assuming no new offense occurred in the interim. **CHAIRMAN COCCHIARELLA** wanted to know if insurance companies could use all kinds of criminal records in determining the premiums of a young driver up to the age of 21.

Greg Van Horssen responded that he hoped all he said was that criminal convictions are important indicators used by insurance carriers to assess future conduct. **SEN. COCCHIARELLA** wondered whether this applied to convictions unrelated to driving. **Greg Van Horssen** replied he was not sure but did not think so. **SEN.**

COCCHIARELLA pursued this by asking whether it covered only criminal driving records. **Greg Van Horssen** offered to check on that but contended it applied to moving violations only. **SEN.**

O'NEIL said he understood 'minor in possession' also applied in instances other than driving and wondered if a non-moving violation of the MIP statute could be used against a person in setting his insurance rate. **Greg Van Horssen** repeated that the issue was the violation of this type of criminal code which generally was an indicator that there was a higher chance of risk when that same individual operates a vehicle. **SEN. O'NEIL** then asked if insurance rates would be raised if a minor was found in possession of tobacco.

Greg Van Horssen admitted he did not have that information with respect to the rating intricacies but it could be that any criminal violation could mean something to someone setting the rates. He further stated he did not know if a law pertaining to tobacco was on the books. **SEN. GERALD PEASE**

asked of **Brenda Nordlund** that when a young driver was stopped, was it not standard procedure by law enforcement to do a background check which would then reveal prior history. **Brenda Nordlund** explained that this bill would transform past convictions for MIP's into a status called 'confidential criminal justice information'; this information is only available to

criminal justice agencies, and this designation would apply to an officer making a routine stop. She went on to say that a person on the street could not get this information after the offender turned 21. **SEN. COCCHIARELLA** addressed the sponsor by saying there seemed to be some confusion about the proposed bill, and pointed to page 1, line 17 of the bill where it says "all records except a conviction involving the consumption of an intoxicating substance while the person was driving or otherwise in actual control of a motor vehicle...". She went on to explain that the intent of the bill was to have everything but the traffic convictions sealed; and that the committee members were incorrect trying to make this a driving issue. **SEN. EKEGREN** agreed with her. **SEN. COCCHIARELLA** then asked him if he was aware of people getting charged with MIP's while they were not driving, and **SEN. EKEGREN** admitted that he knew of a case where a young man was the designated driver, under age, with a car full of kids who had been drinking. They were stopped and the driver was not given the Breathalyzer test as he requested, and was charged with an MIP along with the rest of the kids.

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SEN. COCCHIARELLA then repeated that MIP's are concealed when they follow the three-year law but the non-driving MIP's cannot be considered by insurance companies in setting rates.

Closing by Sponsor:

SEN. EKEGREN closed by saying that criminals are given every advantage when brought to trial for fear we might infringe on their rights, and he felt that we don't give our young people the same advantage. He sympathized with the insurance companies with regards to the bill but felt it was their problem to deal with.

HEARING ON HB 18

Sponsor: REP. ROGER SOMERVILLE, HD 78, Kalispell

Proponents: Jim Currie, Montana Department of Transportation
Mike Murray, Montana Association of Counties

Opponents: none

Opening Statement by Sponsor:

REP. ROGER SOMERVILLE, HD 78, Kalispell, opened by saying that during the interim, a slight oversight in a similar speed limit bill introduced during the last session, namely SB 133, was discovered which dealt with a frontage road near Billings. The

speed limit on the frontage road ended up being higher than the one posted for the adjacent highway. He explained that speed limits are set by the highway commission; for some reason, this discrepancy occurred. Another area of confusion arose with county commissioners wanting to set speed limits in their counties, and it was discovered that in some cases, county commissioners had set speed limits on roads in their county without going through the highway commission. This addresses another problem: law enforcement can only enforce speed limits as they are written into law, and if county commissioners set speed limits, they are not written into the law. These problems are the reason for this bill. The language was changed to allow the commission to set a temporary speed zone while they were going through the formal procedures. The procedure is set in motion when the county commissioners approach the highway commission to set a certain speed in a given area. The highway department then has to do a study before the speed limit is recommended to the highway commission. This process created a huge backlog of requests for speed limit studies, sometimes extending out up to two years before a new speed zone was officially granted. The language in this bill then allows the highway department to send out an engineer, look at the road with the local authority, and come back with a recommended speed zone for the highway director who would take it to the highway commission; this would enable them to set a temporary speed zone until such time as the full study process had been completed. He estimated that this new process would only take 30 or 60 days at most before the new speed limit could be posted, and it would be enforceable by law.

Proponents' Testimony:

Jim Currie, Montana Department of Transportation, offered written testimony **EXHIBIT(his24a01)**, and added that these problems had surfaced not long after SB 133 was enacted. This was the reason for the department to meet with **SEN. ARNIE MOHL**, sponsor of SB 133, and the justice department and the transportation commission to work out a process by which they could take care of some of the problems of speed on some routes which were not designed to take that speed, primarily secondary and frontage roads. This led to the process mentioned by the sponsor, giving the department the authority, in conjunction with county officials, to do a preliminary traffic engineering study and set temporary speed limits, pending the outcome of a formal traffic engineering study. He stated that the department had been operating under these provisions for a number of months, and that it was working relatively well. He maintained the question had remained whether or not law enforcement could actually enforce a speed limit set by the commission under a resolution as opposed

to something that is in statute, and this is exactly what this bill does; it takes the process the department had been using and puts it in statute, thereby removing any doubt about being able to enforce the speed limit.

Mike Murray, Lewis & Clark County Commissioner, Montana

Association of Counties, rose in support of this bill, stating that this bill is a safety measure and essential for good government. He explained that his county had applied for the authority and made use of the concept designed through the interim study by raising the speed limit on a 47 mile stretch because they believed it was safer than the previous lower speed limit.

Questions from Committee Members and Responses:

SEN. DALE BERRY asked who the local authority was. **REP.**

SOMERVILLE replied it was the county commissioners. They or their representatives can go out to tour the site with the highway department, but they are the ones who have to request the change in speed limit. **SEN. BERRY** pointed to a problem in

Ravalli County where the East Side Highway's speed limit was higher than that of the freeway, and that it would be very difficult to attain the posted speed of 70 mph on some secondary roads but people felt they had to drive at that speed because it was posted. When the commissioners applied to have a study done to lower the speed limit, they were told it would be much longer than the 30 or 60 days talked about here. **REP. SOMERVILLE**

replied a full engineering study would probably take nine months if there was no backlog. The counties could circumvent this process by hiring their own engineers, but would be faced with a rather large bill. **SEN. BERRY** then wanted to know when we could expect the department to be caught up and have a quicker response. **REP. SOMERVILLE** felt that there still was some backlog

but this bill would allow the county to have something done within a two month period because the highway department could do a quick drive-through, recommend a change to the commission to set a temporary speed zone until the formal study process was completed. **SEN. ARNIE MOHL** wondered if set rules would still be followed or if this made it easy to create speed traps. **REP.**

SOMERVILLE replied that it was his understanding one could not cherry-pick certain areas, the rules still applied, and the request would have to go through all the channels outlined above.

SEN. COCCHIARELLA referred to **Mike Murray's** testimony in that his county commissioners wanted to increase the speed limit, and pointed to page 2, line 7 through 9 where it says "special reduced" speed zone. She wondered if the word "reduced" could not be taken out to reflect different needs. **Jim Currie** replied that this could be amended in that manner to allow more leeway,

even though requests are for lower speed limits in most cases. **SEN COCCHIARELLA** addressed another issue, namely that of the windshield-drive-by reviews, and wondered what the time frame was with regards to these reviews. **Jim Currie** replied that the temporary speed limit process provided for in this bill would happen rather quickly. He repeated that once the department received the request from the local authority, they drive that route, do the preliminary study and take the recommendation to the following commission meeting, adding that the commission meets 10 times a year. The backlog of the formal commission study, however, still takes a while to get through because they are time consuming.

Closing by Sponsor:

REP. SOMERVILLE closed on HB 18, stating that this bill passed through the House of Representatives 100:0 and asked for equal support in this chamber.

Note: The second half of the committee meeting was chaired by **VICE CHAIRMAN RIC HOLDEN**.

EXECUTIVE ACTION ON SB 208

{Tape : 2; Side : A; Approx. Time Counter : 1.7}

Motion: **SEN. COCCHIARELLA** moved that **SB 208 DO PASS**.

Discussion:

SEN. COCCHIARELLA opened the discussion by repeating that currently, police only have the "reckless driving" charge available to them when dealing with offenses on private property, and that this bill expanded their options by adding the "careless" stipulation. **SEN. HARRINGTON** wondered if police could hand out tickets in the Senate parking lot, too, then. **SEN. O'NEIL** felt that police already have too much jurisdiction on private property and wanted to be able to draw the line somewhere, indicating he opposed this bill. **VICE CHAIRMAN HOLDEN** added that because of the traffic density in a parking lot, it was often impossible to determine which party was at fault if two vehicles, for instance, were backing up at the same time. He felt that if this bill passed, a lot of careless driving tickets would be issued, pointing to the young drivers as well as the older population which may have trouble moving through these congested areas, and the potential number of tickets could have an adverse effect on one's insurance rates. **SEN. MOHL** voiced his opposition to this bill, referring to the congregation at his church and their difficulty in respecting the lines on the

pavement, and stated this was extending jurisdiction too far.

SEN. HARRINGTON stated that he was unable to see the merit in this bill, especially in light of the bill they had just heard.

Substitute Motion/Vote: **SEN. O'NEIL** made a substitute motion that **SB 208 BE TABLED. Substitute motion carried 9-0, with SEN.**

DePRATU excused.

EXECUTIVE ACTION ON SB 225

VICE CHAIRMAN HOLDEN recounted the essence of SB 225 being the distinction between model year of a vehicle and purchase year with regards to licensing.

Motion: **SEN. O'NEIL** moved that **SB 225 DO PASS.**

Discussion:

SEN. COCCHIARELLA felt that the flat fee registration enacted by the last legislature should be given a chance to prove itself first before more legislation is attached. She also wanted to make sure that there would be revenue to the counties and was afraid the impact from this bill would be bigger than the fiscal note indicated. She stated she did not oppose the concept but the timing was wrong since the flat fee bill was just being implemented this month.

Substitute Motion/Vote: **SEN. HARRINGTON** made a substitute motion that **SB 225 BE TABLED. Substitute motion carried 8-1 with O'Neil voting no.**

EXECUTIVE ACTION ON SB 191

Connie Erickson explained that the sponsor, **SEN. DePRATU**, had requested an amendment, and she was in the process of drafting it. **VICE CHAIRMAN HOLDEN** asked her to explain the amendment to the committee. **Connie Erickson** reminded the committee of the presentation by the 3M Co. representatives regarding the new digital license plate processing system. She stated since the bill as introduced did not allow for the department to use this process, the first part of the amendment read that "(b) in consultation with the department of corrections, determine which license plate processing system is the most efficient and versatile manufacturing method for the production of generic specialty license plates;" she then referred to the second part of the amendment which simply says that the generic license plates are not subject to the maximum 4-year limitation which applies to other plates. She went on to say that currently, license plates in Montana have to have the outline of the state with the distinctive border and the word "Montana" as well as the

year placed on it, and the third part of the amendment did away with the requirement for the year and the outline. **VICE CHAIRMAN HOLDEN** reiterated that there are three sets of ideas in this amendment, the first set being in (1) and (2). **Connie Erickson** agreed and said (1) and (2) belonged together, (3) stood alone, and (4) and (5) belonged together. **VICE CHAIRMAN HOLDEN** then stated he wanted to treat these three concepts separately and asked for a motion on the bill.

Motion: **SEN. COCCHIARELLA** moved that **SB 191 DO PASS.**

Motion: **SEN. HARRINGTON** moved that **AMENDMENT, PART 1 BE ADOPTED.**

SEN. O'NEIL voiced concern over the department being locked in to 3M's process and wanted to change the wording to say "any" process in order to enable the department to look at other options and come up with the best process.

Substitute Motion: **SEN. O'NEIL** made a substitute motion that **AMENDMENT, PART 1 BE ADOPTED AS AMENDED.**

Discussion:

SEN. HARRINGTON wondered if this would violate the contract Montana has with 3M, being that they have manufactured this state's plates for quite some time. **SEN. DALE BERRY** remarked that it would, but that a contract could be changed at some point. **SEN. COCCHIARELLA** admitted she, too, was bothered by the perceived exclusivity with 3M company and asked if the bill in fact stated that the 3M process had to be used. **Connie Erickson** replied that it only said to determine whether "a" digital processing system is the most efficient; it does not say the department has to go to 3M. **SEN. COCCHIARELLA** injected that **SEN. O'NEIL'S** concern would be covered under a different section of law, such as those dealing with bidding. She could not imagine the 3M company getting this contract without the two departments looking at other options, and opposed amending the amendment in this way. **SEN. O'NEIL** said all he wanted was to eliminate the word "digital" so all methods could be considered. He said he was sure that 3M owned the only digital process at this point but that there could be something like a silk screen process. **SEN. MOHL** wondered if it could be worded "digital or equal". **VICE CHAIRMAN HOLDEN** responded that substitution of the word "any" would require the department to find any process that is equal, or better. **SEN. O'NEIL** felt it would be better to leave the word "equal" out because it added new questions by forcing a comparison between values, aesthetic and financial. **SEN. HARRINGTON** explained the reason "digital" was put in the bill was its superiority over the present processing system. **Connie Erickson** suggested rewording the amendment to reflect **SEN. O'NEIL'S** concern with being locked in to one company's system. **SEN. COCCHIARELLA** offered to change "whether a digital" to

"which", reading " the department of corrections determines which license processing system is the most efficient". She felt this would solve the perceived problems. **VICE CHAIRMAN HOLDEN** then invited **SEN. O'NEIL** to close on his substitute motion. **SEN. O'NEIL** agreed to go along with **VICE CHAIRMAN HOLDEN'S** suggestion of inserting the word "any".

Motion/Vote: **SEN. HOLDEN** moved that **SUBSTITUTE MOTION ON THE AMENDMENT, PART 1 BE ADOPTED AS AMENDED**. Motion failed 1-8, with **SEN. O'NEIL** dissenting.

{Tape : 2; Side : B; Approx. Time Counter : 0}

VICE CHAIRMAN HOLDEN asked for further discussion on **SEN. HARRINGTON'S** original motion to adopt part 1 of the amendment.

Substitute Motion: **SEN. COCCHIARELLA** made a substitute motion that **AMENDMENT, PART 1 BE AMENDED** to say "which" instead of "whether a digital."

Discussion:

SEN. HARRINGTON asked for clarification. **SEN. COCCHIARELLA** repeated she wanted to take out "whether a digital" and insert the word "which", so it would read "...determine which license plate processing system is the most efficient"

{Tape : 2; Side : B; Approx. Time Counter : 0} **SEN. HARRINGTON** maintained this meant the department should continue to use the old system and felt this changed the meaning of the bill. **SEN. O'NEIL** agreed that this change allowed the department to consider the system it already has. **SEN. HARRINGTON** asked of **Ms. Erickson** whether we were changing the meaning of the bill, and **Ms. Erickson** said no, and pointed out that this was an amendment. **Motion/Vote:** **SEN. HOLDEN** moved that **SUBSTITUTE MOTION DO PASS**. Motion carried 9-0, with **SEN. DePRATU** excused.

VICE CHAIRMAN HOLDEN then brought up section (3) of the amendment, which was determined to be part 2.

Motion: **SEN. COCCHIARELLA** moved that **AMENDMENT, PART 2 BE ADOPTED**.

Discussion:

SEN. MOHL wondered if (3) and (4) could be tied together in this motion. **VICE CHAIRMAN HOLDEN** repeated that (4) and (5) go together, and (3) is a separate issue.

Motion/Vote: **SEN. HOLDEN** moved that **AMENDMENT, PART 2 BE ADOPTED**. Motion carried 9-0, with **SEN. DePRATU** excused.

VICE CHAIRMAN HOLDEN then brought up sections (4) and (5) of the amendment which were determined to make up part 3 of the amendment.

Motion: **SEN. COCCHIARELLA** moved that **SECTION (5) BE ADOPTED.**

Discussion:

SEN. COCCHIARELLA stated she did not think it appropriate or necessary to have the year the plate was bought stamped on it, especially if the plate was used for four or more years as allowed by law. **VICE CHAIRMAN HOLDEN** asked **Ms. Erickson** if she thought this portion dealt with the decals which show the year. **Ms. Erickson** answered that it did not. The decals he referred to were the ones issued with the registration.

Motion/Vote: **SEN. HOLDEN** moved that **AMENDMENT, PART 3 BE ADOPTED.**
Motion carried 9-0.

Motion/Vote: **SEN. COCCHIARELLA** moved that **SB 191 DO PASS AS AMENDED.** Motion carried 9-0, with **SEN. DePRATU** excused.

EXECUTIVE ACTION ON SB 237

Motion: **SEN. ROUSH** moved that **SB 237 DO PASS.**

Discussion:

SEN. ROUSH felt that this bill would bring conformity to the trucking industry and said he supported it. **SEN. O'NEIL** expressed concern that this bill would enable the trucking industry to get together and increase the weight they could carry, thereby eliminating the railroads. He then added that he did like the concept of competition, so maybe this was a good thing.

Vote: Motion carried 9-0, with **SEN. DePRATU** excused.

EXHIBIT (his24a02), Amendment #SB019102.ace, was delivered the following day, after the committee hearing took place.

ADJOURNMENT

Adjournment: 4:50 P.M.

SEN. ARNIE MOHL, Chairman

MARION MOOD, Secretary

AM/MM

EXHIBIT (his24aad)